

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

TULSA CANCER INSTITUTE, PLLC,)
 an Oklahoma Professional Limited)
 Liability Company;)
 OKLAHOMA ONCOLOGY &)
 HEMATOLOGY, INC., an Oklahoma)
 Corporation, dba CANCER CARE)
 ASSOCIATES; STATE of)
 OKLAHOMA ex rel., BOARD of)
 REGENTS for the STATE of)
 OKLAHOMA; FLORIDA CANCER)
 SPECIALISTS, P.L., a Florida)
 Professional Limited Liability)
 Company;)
 HEMATOLOGY-ONCOLOGY)
 ASSOCIATES of CENTRAL NEW)
 YORK, P.C., a New York)
 Professional Corporation;)
 VIRGINIA CANCER INSTITUTE, a)
 Virginia Commonwealth)
 Professional Corporation;)
 TENNESSEE ONCOLOGY, PLLC,)
 a Tennessee Professional Limited)
 Liability Corporation;)
 NORTH SHORE HEMATOLOGY)
 ONCOLOGY ASSOCIATES, P.C. a)
 New York Professional Corporation,)
 and)
 CENTER FOR CANCER & BLOOD)
 DISORDERS, P.C., a Maryland)
 Professional Corporation,)

Plaintiffs,)

v.)

GENENTECH INC., a California)
 Corporation,)

Defendant.)

Case No. 15-cv-157-TCK-TLW

PLAINTIFFS' MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT

Plaintiffs move for leave to amend their Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2) to add new plaintiff Texas Oncology, a Texas Professional Association, and Plaintiffs move for leave to add additional plaintiffs making the breach of warranty and unjust enrichment claims concerning Herceptin prior to the deadline for parties to be added that will be set in the Joint Status Report. Plaintiffs state in support thereof:

1. Plaintiffs Tulsa Cancer Institute, PLLC and Oklahoma Oncology & Hematology, Inc. ("Original Plaintiffs") filed the Complaint on April 2, 2015 (Dkt. #2).
2. Defendant filed a Motion to Dismiss on May 26, 2015 (Dkt. #19).
3. Original Plaintiffs filed a Motion for Leave to File Amended Complaint on July 7, 2015 (Dkt. #28).
4. The proposed First Amended Complaint added seven plaintiffs and added allegations in response to Defendant's Motion to Dismiss.
5. Original Plaintiffs also filed a Response to the Motion to Dismiss on July 7, 2015 (Dkt. #29).

6. Defendant Genentech objected to the Motion for Leave to File Amended Complaint, arguing futility based on joinder and lack of personal jurisdiction. (Dkt. #31).

7. The Court granted the Motion for Leave to File Amended Complaint over Defendant Genentech's objection. (Dkt. #35).

8. The Court permitted the addition of plaintiffs who are not citizens or residents of Oklahoma, but who make the same breach of warranty and unjust enrichment claims concerning Herceptin as the Original Plaintiffs.

9. No scheduling order has been entered in this case.

10. No party has moved for summary judgment in this case.

11. No party has formally requested discovery in this case.

12. No Rule 26(f) conference has occurred in this case.

13. No Joint Status Report has been entered in this case.

14. The case has not been set for trial.

15. Additional potential plaintiffs seek to join this litigation to make breach of warranty and unjust enrichment claims concerning Herceptin against Defendant Genentech.

16. Plaintiffs seek to file a Second Amended Complaint to add those potential plaintiffs. See Proposed Second Amended Complaint (Exhibit 1).

17. Defendant Genentech does not consent to the filing of a Second Amended Complaint to add these potential plaintiffs.

18. Plaintiffs' Second Amended Complaint adds the following entity as a plaintiff: TEXAS ONCOLOGY, a Texas Professional Association.

19. Plaintiffs expect other entities may desire to join this litigation to make breach of warranty and unjust enrichment claims concerning Herceptin against Defendant Genentech.

20. Given Defendant Genentech's repeated opposition to adding plaintiffs making breach of warranty and unjust enrichment claims concerning Herceptin, Plaintiffs request leave to add additional plaintiffs making breach of warranty and unjust enrichment claims concerning Herceptin through the cutoff date for adding parties that will be set in the Joint Status Report. This will avoid serial motions for leave to file amended complaints.

21. A court should "freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). "Courts generally deny leave to amend only on 'a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment.'" *Kiefner v. Sullivan*, 13-CV-714-TCK-FHM, 2014 WL 2197812, at *1 (N.D. Okla. May

27, 2014) (quoting *Duncan v. Manager, Dep't of Safety, City, and Cnty. of Denver*, 397 F.3d 1300, 1314 (10th Cir. 2005) (quotation marks omitted)).

22. None of the reasons outlined in *Duncan* for denying leave to amend apply here.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant the Motion For Leave To File Second Amended Complaint and grant leave to add additional parties making breach of warranty and unjust enrichment claims against Defendant Genentech concerning Herceptin.

Respectfully Submitted,

/s/Steven J. Adams

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2015, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and to the following ECF registrants:

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